

REMARKS

1. STATUS OF THE CLAIMS

Claims 136, 144-152, 154, 155, 157-159, 162-164 and 167-176 are pending in the application, of which Claims 144-152, 154, 155, 157-159, 162-164 were previously withdrawn.

In particular, Claims 144-150 were previously withdrawn from consideration by the Examiner in an Office Action mailed September 28, 2007 as being directed to non-elected species. Claims 151-152, 154-155, 157-159 and 162-164 were previously withdrawn from consideration by the Examiner in the prior final Office Action mailed on May 1, 2009 pursuant to 37 C.F.R. §1.142(b) as being drawn to non-elected groups and species, there being no allowable generic or linking claim.¹

In Applicants' prior response to the prior final Office Action mailed on May 1, 2009, Claims 123-135, 137-143, 153, 156, 160-161 and 165-166 were canceled, Claim 136 was amended to change its form from a dependent to an independent claim, Claims 142 and 143 were canceled and replaced by new Claims 167-170, new Claims 167-170 were added to change the form of Claims 142 and 143 from dependent to independent claims, new Claim 171 was added as supported by the Specification,² and new Claims 172-177 were added to recite exemplary molecules that bind to a carboxylated glycan, as supported by then-pending Claim 156.

2. RESTRICTION

The Examiner required election of one of the following 4 groups:³

Group I: Claims 136 and 170-176, "drawn to a method for identifying a test agent,"

Group II: Claim 167, "drawn to a different method for identifying a test agent,"

Group III: Claim 168, "drawn to a different method for identifying a test agent," and

Group IV: Claim 169, "drawn to a different method for identifying a test agent."

¹ Prior final Office Action mailed on May 1, 2009, page 3, item 3.

² The Specification teaches two exemplary mouse animal models: a model of zymosan-induced acute peritoneal inflammation described in Example 10, beginning on page 96, and a model of colitis and Crohn's disease described in Example 34, beginning on page 34, and Figures 28 and 29.

³ Office Action, pages 2, item #2.

3. **ELECTION**

To expedite prosecution by being fully responsive to the instant Office Action, Applicants elect, **with traverse, Group I**, Claims 136 and 170-176, “drawn to a method for identifying a test agent.”

4. **TRAVERSAL**

Applicants respectfully traverse the restriction requirement and request **rejoinder of all the Groups I, II, III, and IV** because the Examiner invokes restriction based on a changed form of the claims, thus falling afoul of PCT Rules 13.3 and 13.4, which state:

13.3. Determination of Unity of Invention Not Affected Manner of Claiming

The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

13.4. Dependent Claims

Subject to Rule 13.1, it shall be permitted to include in the same international application a reasonable number of dependent claims, claiming specific forms of the invention claimed in an independent claim, even where the features of any dependent claim could be considered as constituting in themselves an invention.

37 CFR 1.475 (e): The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

In other words, PCT Rules 13.3 and 13.4, and 37 CFR 1.475(e) direct the Examiner that it is **improper** to base a restriction on whether the claims are drafted in a dependent or independent form, and/or on whether the inventions are claimed in separate claims or as alternatives within a single claim. Yet this is what the Examiner has done. Applicants’ prior response changed the **form** of the previously examined claims to refer to cell lines individually, rather than in the alternative, in a particular claim. Said differently, the Examiner is now improperly restricting claims that had previously been amended only with respect to their **form** from a dependent to an independent claim.

Specifically, independent Claim 136 of Group I was amended by Applicants in the prior response to change the **form** of this then-pending (i.e., **previously examined**) claim from a dependent to an independent claim. In addition, Claim 136 was amended to recite that the

carboxylated glycan “binds to a molecule comprising one or more of S100A8, S100A9, S10012, amphoterin, annexin I, and a polypeptide sequence from amino acids 1 to 12 of annexin I,” as supported by then-pending (i.e., **previously examined**) Claim 156.

Similarly, Applicant’s prior response added new independent Claim 167 of Group II, independent Claim 168 of Group III, and independent Claim 169 of Group IV by merely changing the **form** of then-pending (i.e., **previously examined**) claims 142 and 143 from a dependent to an independent claim, so that the amended independent claims 167-169 recite the monoclonal antibodies of then-pending Claims 142 and 143 individually in step A) ii).

Applicants aver that changing the **form** of a claim does **not** change its “general inventive concept.” Indeed, the Examiner has failed to provide any **reasoning to explain why** changing the form of previously examined claims results in a “lack [of] the same or corresponding special technical features,”⁴ and allegedly “necessitate this new requirement for restriction.”⁵ The Examiner’s action is contrary to the express directive of PCT Rules 13.3 and 13.4, and 37 CFR 1.475(e) thus necessitating withdrawal of the restriction.

The Examiner also argued that “The inventions listed as Groups I through IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they **lack** the same or corresponding special technical features.”⁶ However, in other parts of the Office Action, the Examiner made the **contradictory** statement that there is a “technical feature that **is** common to the inventions,”⁷ and that “this feature was obvious at the time of the invention.”⁸ While not acquiescing to the Examiner arguments regarding alleged obviousness, Applicants aver that the Examiner’s statements are internally inconsistent, and are moot in view of the above-discussed violation of PCT Rules 13.3 and 13.4, and 37 CFR 1.475(e).

In view of the above, Applicants respectfully request withdrawal of the restriction requirement, and request rejoinder of all the Groups I, II, III, and IV.

5. REQUEST REJOINDER OF NON-ELECTED CLAIMS

Without acquiescing to the propriety of the Examiner’s restriction of the claims, Applicants reserve the right to rejoinder and consideration, upon allowance of an elected claim,

⁴ Office Action, page 3, item #3.

⁵ Office Action, page 2, 1st paragraph.

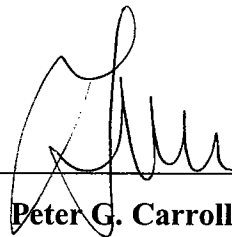
⁶ (Emphasis added) Office Action, page 3, item #3.

⁷ Id.

⁸ (Emphasis added) Office Action, page 3, item #4.

of non-elected claims that depend from or requires all the limitations of the allowable claims, as provided by 37 CFR § 1.141 and MPEP 809, **including any claims that may have been previously withdrawn** from consideration.

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A handwritten signature in black ink, appearing to read 'Peter G. Carroll', is written over a horizontal line.

Peter G. Carroll
Registration No. 32,837

MEDLEN & CARROLL, LLP
101 Howard Street, Suite 350
San Francisco, California 94105
(781) 828-9870